

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3823 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

THARU KALA - DOLAR SINDHI BHATTI

Versus

STATE OF GUJARAT & OTHERS

Appearance:

MS JAYSHREE BHATT for MRS MADHUBEN SHARMA
for Petitioner.

MR MA PATEL ADDL.GOVERNMENT PLEADER for Respondents

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 06/09/1999

ORAL JUDGEMENT

Heard the learned advocate Ms.Jayshree Bhatt for advocate Mrs. Madhuben Sharma on behalf of the petitioner and learned APP Mr. M.A.Patel for the respondents.

2. The petition is filed under Art.226 of the

Constitution of India to challenge the legality and propriety of the detention order dt. 16/11/1998, copy of which is produced at Annexure : C.

3. The respondent no.2 -District Magistrate, Banaskantha, in exercise of powers conferred under Sec.3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA" for short) has passed the impugned order holding that in order to prevent the petitioner from indulging into nefarious criminal and antisocial activities, it is necessary to detain the petitioner as his activities are likely to affect prejudicially to the maintenance of public order, and hence the impugned order as well as committal order as per copies produced vide Annexure : A, the petitioner is directed to be kept at Surat Jail and treated him as Class-II detenu.

4. The petitioner has produced grounds of detention at Annexure : C vide Paras 13 to 17 of the compilation. The ground of detention, inter alia, suggests that six criminal incidents were alleged for which following criminal cases were registered against the petitioner:-

That the first incident was registered against the petitioner vide CR.No.180/97 at Deesa City Police Station in respect to offences made punishable under Secs.457 and 380 of I.P.Code. It is, inter alia, alleged that in between 20-30 hrs of 7th December, 1997 and 6-15 hrs. of 8th December, 1997, a lock placed at the door of Jain temple situate at Shripal Society, Deesa City was broke opened and temple ornaments and silver articles worth Rs.93,750/- were stolen for which said offence was registered and present petitioner was arrested on 12/6/1998 during investigation. It is also alleged that the Police has recovered silver articles worth Rs.9,500/- at the instance of present petitioner under a discovery panchnama during investigation; that a chargesheet has been filed and said matter is pending for trial in the court.

That the second incident was registered against the petitioner vide CR.No.182/97 on 6th December, 1997 at Deesa City Police Station in respect to offences made punishable under Secs.457 and 380 of I.P.Code, wherein it is alleged that in between 8-00 a.m. of 6th December, 1997 and 11-00 a.m. of 8th December, 1997, a lock placed on the outer door of informant's house was broke opened and the tape-recorder of Philips Company made worth Rs.2,950/- was stolen for which said offence was registered and investigated. During investigation, on

15th June, 1998, petitioner was arrested and said matter is pending for trial in the court.

That the third incident was registered against the petitioner vide CR.No.282/97 on 16th December, 1997 at Deesa Rural Police Station in respect to offences made punishable under Secs. 342, 457, 380 read with Sec. 114 of I.P.Code, wherein it is alleged that in between 1-30 a.m. to 5-00 p.m. of 16th December, 1997, the complainant was wrongfully confined in a room by placing lock at the outer door of his house and a theft of temple ornaments, silver articles and an amount of Rs.13,250/- from Charity Box were stolen. Vide above stated incident, the offence was registered and during investigation, on 28th May, 1998 present petitioner was arrested; that during investigation at the instance of present petitioner, Police has recovered 600 Gms. silver and a bell made of brass etc. worth Rs.4,350/- under a discovery panchnama. Said matter is pending for trial in the court.

That the fourth incident was registered against the petitioner vide CR.No.2/98, at Deesa Rural Police Station in respect to offences made punishable under Secs.457 and 380 of I.P.Code. wherein it is alleged that in the night between 3rd and 4th January, 1998, a lock placed on a Jain Temple was broke opened and temple ornaments worth Rs.29,930/- was stolen for which said offence was registered and during investigation, on 4th June, 1998, the petitioner was arrested; that during investigation at the instance of petitioner, 800 Gms. silver and 7.250 Gms. golden bar worth Rs.7,780/- was recovered under a discovery panchnama. Said matter is pending for trial in the court.

That the fifth incident was registered against the petitioner vide CR.No.109/98, at Deesa Rural Police Station in respect to offences made punishable under Secs.457 and 380 of I.P.Code, wherein it is alleged that in the first week of Kartak month, at any time, a lock placed at the door of Store Room of the Chosath Mataji Temple situate at village Khardosan, Tal. Deesa was broke opened and Amplifier, Speaker, Wall Clock etc. worth Rs.5,800/- were stolen for which an offence was registered under Secs. 457 and 380 of I.P.Code and during investigation, petitioner was arrested on 10th June, 1998. Said matter is pending for trial in the court.

That the sixth incident was registered vide CR.No.7/98 at Panthawada Police Station in respect to

offences made punishable under Secs.395 read with Sec.34 of I.P.Code, wherein it is alleged that on 11th February, 1998 around 12-00 p.m. informant was beaten by stone throwing and iron bar and was tied with a rope and wrongfully confined in the corner in an inn, and temple ornaments, wall clock as well as amounts in cash, total worth Rs.14,400/- was looted for which the said offence was registered; that during investigation, petitioner was arrested on 19th June, 1998 and at the instance of petitioner, wall clocks and knife etc. were recovered along with cash worth Rs.800/- under a discovery panchnama. Said matter is pending for trial in the court.

6. On the basis of aforesaid material placed before respondent no.1, the respondent no.1 has come to the conclusion that the petitioner is a "dangerous person" within the meaning of Sec.2(c) of the Pasa as the nefarious criminal and antisocial activities of the petitioner is likely to cause adverse effect to the maintenance of public order and that enforcement of general law is not sufficient to prevent the petitioner from continuing such activity and as in exercise of power under Sec.2(1) of the Pasa, it is necessary to pass the order of detention against the petitioner.

7. The petitioner has challenged the impugned order on numerous grounds. However during submissions, learned advocate appearing for the petitioner has restricted the contest on two points as stated hereunder:-

(a) That though the petitioner was in judicial custody since prior to the date of taking action and passing impugned order dt. 16/11/1998. The detaining authority has shown apprehension that the petitioner is likely to continue his alleged criminal and antisocial activity. That such apprehension is misplaced in the facts of the present case and as such impugned order is vitiated.

(b) That the last incident against the petitioner being dated 28th May, 1998, there is no nexus between the alleged criminal and antisocial activity of the petitioner and the date of taking action on 16th November, 1998. Thus on account of inordinate delay in taking action, subjective satisfaction reached by the detaining authority is vitiated and order is bad in law.

7. It may be noted that this Court, while deciding the matter of ELES N. PATEL Vs. COMMISSIONER OF POLICE, AHMEDABAD, reported vide 1997 (1) G.L.H. 381,

referring the observations made by the Supreme Court in the matter of JAGAN NATH BISWAS Vs. STATE OF WEST BENGAL, reported vide AIR 1975 SC 1516, has held that passing of detention order subsequent to last incident ipso facto is not fatal because delay may be unavoidable and reasonable in certain cases. What is required by law is that the delay must be satisfactorily explained by the detaining authority.

8. In the instant case, the ground of detention is devoid of any explanation as to why action is taken as late as on 16th November, 1998. Not only that despite service of rule, neither respondent no.2 nor any authority has filed any affidavit providing any reasonable explanation for such a delay in taking action. Under the circumstances, live link between alleged criminal and antisocial activity of the petitioner for the last date of the incident and the date of taking action having been snapped, the subjective satisfaction reached by the authority has been vitiated. As the petition is succeeding only on one contention, it is not necessary to deal with other contentions as raised in the petition. Hence the impugned order of detention deserves to be quashed and set aside.

9. On the basis of aforesaid discussion, the impugned order of detention dt. 16th November, 1998 passed by respondent no. 2 -The District Magistrate, Banaskantha against the petitioner -Tharu Kala Dafer Sindhi Bhatti is hereby quashed and set aside. The petitioner is directed to set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

Dt.6/9/1999. ----
(ccshah)